

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)	
)	
Distribution of 2014-2017)	Docket No. 16-CRB-0010-SD
Satellite Royalty Funds)	(2014-2017)
_____)	

**Multigroup Claimants’ Opposition to Allocation Parties’ Joint Motion
for Further Distribution of 2015-2017 Satellite Royalties**

Worldwide Subsidy Group LLC (a Texas limited liability company) dba

Multigroup Claimants (“MGC”) hereby opposes the Allocation Parties’ *Joint Motion for Further Distribution of 2015-2017 Satellite Royalties*.

PROCEDURAL HISTORY

On September 15, 2021, the “Allocation Parties” moved for distribution of 95% of the 2015-2017 satellite funds, reserving 5% of each fund for resolution of existing distribution phase disputes. On March 14, 2022, the Judges issued a ruling published in the Federal Register, seeking comments on the proposed partial distribution.

MGC submitted its comments and opposition to the proposed distribution on April 13, 2022. On May 4, 2022, the Judges issued their *Order Denying Motion for Partial Distribution*, identifying the bases for their denial, including but not limited to the fact that the Allocation Parties had not provided any of the confidential settlement information by which their proposal could be evaluated. Although ignored by the current motion, the Judges *additionally* noted in their order the multiple instances in which miscalculations have occurred, and consequent excess disbursements that have been

made for which the Licensing Section has been charged with reclaiming royalties. Despite the fact that orders have been issued in three proceedings directing the Licensing Section to reclaim significant royalties – in one proceeding over \$1 Million -- and that each of such orders is no less than one and one-half years old, the Licensing Section has yet to do so. The *identical* parties from whom royalties have yet to be reclaimed are the same entities seeking the distribution of royalties under the current motion.

By its motion herein, the Allocation Parties provide their confidential settlement figures,¹ and revise their proposal to seek distribution of 90% of the 2015-2017 satellite funds, reserving 10% of each fund for resolution of existing distribution phase disputes.

ARGUMENT

- I. The royalties proposed by the Allocation Parties to be held in reserve fail to provide a sufficient reserve for the Distribution Phase disputes.**
 - a. No information is provided by the Allocation Parties as to their estimated value of Multigroup Claimants' claims.**

Distribution phase disputes exist in three categories for which Multigroup Claimants has pending claims – Sports Programming, Program Suppliers, and Devotional Claimants. According to the figures presented as part of the “restricted” motion, the Joint Sports Claimants, MPA-represented program suppliers, and the Settling Devotional

¹ Although Multigroup Claimants learned of the motion as a result of counsel receiving an email from eCRB, that only allowed Multigroup Claimants access to the “public” version of the motion via eCRB. On August 17, 2022, the eCRB system would not allow MGC to access the “restricted” version. Moreover, despite the proof of service indicating that both the “public” and “restricted” versions were served directly on the undersigned via email, they were not. Therefore, counsel for Multigroup Claimants emailed counsel for the MPA and requested a copy of the “Restricted” version, which was ultimately received on August 25, 2022.

Claimants seek distribution, respectively, of [REDACTED], [REDACTED], and [REDACTED], of the 2015, 2016, and 2017 royalty pools.² See Appendix A to Motion. Collectively, those three parties seek distribution of [REDACTED] of each of the 2015, 2016, and 2017 royalty pools.

Until the Distribution Phase is underway, it is unclear what portion to which Multigroup Claimants will be entitled for each of the three categories, for each of the three royalty pools. Data which appears to be in the possession of the Allocation Parties, as reflected by the written direct cases submitted in the parallel 2014-2017 cable Allocation Phase proceeding, could shed light on such subject, yet none of that data has been presented by the Allocation Parties in order to advance its motion. Consequently, no information is provided as to what portion to which the Allocation Parties believe Multigroup Claimants is entitled of a royalty pool that constitutes [REDACTED] of the aggregate royalty pool. Rather, the *aggregate* of discussion offered by the Allocation Parties is the following:

“[I]n the most recent satellite Distribution Phase proceeding, concerning the 2010-13 satellite royalty funds, Multigroup Claimant’s average share of the total funds averaged just 0.7%”.

Motion at 2.

No different than in its earlier motion for partial distribution, as a rationalization for the low reserve, the Allocation Parties point to distributions to Multigroup Claimants

² Although not significantly different for purposes of Multigroup Claimants’ arguments herein, Multigroup Claimants is confounded by the percentages that the Allocation Parties attribute at Appendix A to its motion, which do not comport with the percentages calculated after utilizing the specific monetary figures

in the 2010-2013 proceedings.³ Therein, no royalty was accorded to Multigroup Claimants for its sports programming claims (which were dismissed during 2010-2013 because of issues that no longer exist), and Multigroup Claimants' claims in the program suppliers and devotional categories were severely diminished following a sanction that was imposed denying Multigroup Claimants the "presumption of validity". Again, no information or estimate is provided by the Allocation Parties as to the value of Multigroup Claimants 2014-2017 claims, even under their own constructed methodologies, nor do the Allocation Parties acknowledge the wide variation of satellite royalties that may be accorded to a participant year-to-year.⁴ No different than the earlier motion by the Allocation Parties, any person attempting to assess the reasonableness of the proposed reserve is grappling in the dark.

b. Rulings on pending motions could result in awards to Multigroup Claimants far in excess of the proposed reserve of 10%.

Moreover, and unlike when Multigroup Claimants responded to the Allocation Parties' earlier motion for distribution, *now pending* before the Judges are motions to dismiss the *entirety* of the MPA-represented program suppliers' claims to 2016 and 2017 royalties for its failure to produce the most basic information necessary to establish and

³ In its earlier motion, the Allocation Parties focused exclusively on satellite royalties received by Multigroup Claimants for the 2013 royalty pool, the lowest allocation received by Multigroup Claimants as a result of the 2010-2013 proceeding.

⁴ For example, for 2010, Multigroup Claimants was awarded 24.7% of the devotional satellite royalty pool, while in 2013 received only 2.3%.

verify the claimant and program claims for those royalties,⁵ and an undetermined percentage of the 2015, 2016, and 2017 claims of the SDC for its failure to produce any documents reflecting the engagement of two law firms *as agents* to make claim for satellite royalties on behalf of multiple devotional claimants, i.e., in the context that such law firms expressly represented to have *no attorney-client relationship* with such devotional claimants, and are merely acting as agents for such devotional claimants.⁶

For 2016 and 2017, these challenges equate to an aggregate of [REDACTED] of the aggregate royalty pool that, if successful, would be allocated to Multigroup Claimants, without even considering Multigroup Claimants' claim to sports programming royalties. For 2015, these challenges could equate to an aggregate of [REDACTED] of the aggregate royalty pool that, if successful, would be allocated to Multigroup Claimants, without even considering Multigroup Claimants' claims to sports programming royalties or program supplier category royalties. The proposed reserve of 10% for each of the royalty pools immediately sets off alarm bells, without even addressing the value of Multigroup Claimants' claims in the three categories in the absence of such challenges.

c. No calculation is made for the claims of Global Music Rights LLC.

Further, Multigroup Claimants' understanding is that Global Music Rights LLC remains a participant in the Distribution Phase proceedings, making claim in the music category. Multigroup Claimants has never been served with any notice that such entity is

⁵ See *Multigroup Claimants' Motion for Disallowance of Claims by MPA-Represented Program Suppliers* (filed May 6, 2022).

⁶ See *Multigroup Claimants' Motion for Disallowance of Claims by Settling Devotional Claimants* (filed May 6, 2022).

no longer a participant in the Distribution Phase proceedings, such entity appears on the service list, and was served the Allocation Parties' motion precisely because it remains a participant. Notwithstanding, in their motion, the Allocation Parties assert that the *only* remaining Distribution Phase controversies relate to the shares to be received by Multigroup Claimants, with no mention of Global Music Rights LLC. Motion at 2. If Global Music Rights LLC remains a participant in the Distribution Phase proceedings, and the 10% reserve proposed by the Allocation Parties is intended to address any distribution to such entity, the Allocation Parties have failed to even address what value should be accorded to such entity's claims, which further serves to warrant caution as to the Allocation Parties' proposal, and denial of its motion.

II. No distributions should be made to the Allocation Parties unless and until the Judges rule on Multigroup Claimants' pending motions for partial distribution *in this proceeding*, which briefing predated the Allocation Parties' earlier motion for partial distribution by six months, and predates the current motion by no less than eleven months.

As noted in Multigroup Claimants' response to the Allocation Parties' earlier motion, two months prior to the filing of such motion, on July 23, 2021, Multigroup Claimants moved for partial distribution of 2015-2017 satellite funds and 2015-2017 cable funds, seeking 50% of the average percentage amounts previously awarded to MGC in the 2010-2013 satellite/cable proceedings in the devotional programming category. The Settling Devotional Claimants were the only entity to object (Aug. 6, 2021), and opposed *any* distributions to Multigroup Claimants, regardless of Multigroup Claimants' qualification as an "established claimant". On September 13, 2021, the

Judges issued a *Notice Requesting Comments* on Multigroup Claimants' motion in the *Federal Register*, requiring comments no later than October 13, 2021. No further comments were submitted, but the Judges have yet to issue a ruling on Multigroup Claimants' motions, despite all briefing concluding almost a year ago.

It remains a frustrating quandary to Multigroup Claimants why its motions for partial distribution *in this proceeding*, for which October 13, 2021 was the last date by which relevant pleadings could have been submitted, have been ignored, while the Allocation Parties' earlier motion for partial distribution, for which April 13, 2022 was the last date by which a relevant pleading could have been submitted, has been considered and addressed in detail. Moreover, the Allocation Parties earlier motion was considered and ruled upon within three weeks, by May 4, 2022.

As a related matter, multiple renewed motions have been filed by Independent Producers Group (a different fictitious business name by which Worldwide Subsidy Group LLC has operated) to finally be distributed its 2000-2003 cable proceeding royalties – *which royalty claim was settled over three years ago* -- or alternatively receive a partial distribution of the significant funds to which IPG remains entitled. Ironically, on March 11, 2022, the Judges directed IPG to cease filing any further motions for distribution to such royalties, and adamantly denied IPG's contention that it is receiving disparate treatment in the consideration of matters relating to its distributions. *Order Regarding All Pending Motions for Final or Partial Distribution of Funds in the Devotional Category* at 4 (Mar. 11, 2022), Docket no. 2008-2 CD 2000-2003 (Phase II remand). Notwithstanding, immediately following such ruling, the Allocation Parties'

earlier motion for partial distribution was considered and addressed in detail despite trailing Multigroup Claimants' motions for partial distribution by six months. No explanation for such disparate treatment has been offered, nor should such disparate treatment continue.

For the foregoing reasons, the Judges should not consider the Allocation Parties' motion for partial distribution for 2015-2017 royalties unless and until the Judges first address Multigroup Claimants' motions for partial distribution of 2015-2017 royalties.

III. The Judges should not make any further distributions to a party until such party has remedied any instances of overpayment in prior proceedings.

As noted above, the *identical* parties from whom royalties have yet to be reclaimed following prior miscalculations and excess disbursements, are the same entities seeking the distribution of royalties under the current motion. That is, the same entities that received overpayments in prior proceedings, and failed to return the overpayments on their own volition, are now asking for a partial distribution far in excess of any percentage previously advanced in any proceeding.

For example, in the 1999-2009 Satellite/2004-2009 Cable Consolidate Proceeding, Docket nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II), significant calculation errors were identified and addressed by the Judges in their January 11, 2021 order, including a direction that the Licensing Division recover over \$1 Million of overpayments to certain Allocation Phase parties. See *Joint Motion for Order Addressing Overpayment and Surplus Issues* (Sept. 10, 2021). By all appearances, no recovery of overpayments has occurred despite the passage of eighteen (18) months.

In the 2000-2003 Cable Proceeding, a similar issue of overpayments exists. See *Second Order Directing Recalculation of Royalty Calculations* (Mar. 11, 2022) referencing *Order Directing Recalculation of Royalty Allocations in the Devotional Category and Seeking Additional Guidance* (Aug. 28, 2020), 2000-2003 Cable Proceedings, Docket no. 2008-2 CD 2000-2003 (Phase II)(Remand). Again, repayment has not occurred despite the passage of two years.

In the 2010-2013 Cable/Satellite Proceeding, the same. On February 4, 2021, the Judges issued their *Order Modifying Order Granting Multigroup Claimants' Third Motion for Final Distribution of 2010-2013 Satellite Royalty Funds*, Docket no. 14-CRB-0010-CD/SD (2010-2013), wherein the Judges noted that a shortfall existed, and ordered the Licensing Division to:

“take steps to invoke the repayment agreements that bind the allocation phase parties in order to recover the overpayments that those parties have received. Once the Licensing Division has recovered the overpayments, with interest, the Judges will order final distribution of those amounts to MGC.”

Id. Still, nothing has occurred, prompting the Judges to issue its *Order Regarding Final Distribution of 2010-2013 Satellite Royalty Funds* on December 22, 2021, *again* ordering the Licensing Division to perform the necessary calculations and overpayment recovery ordered almost a year prior.⁷

⁷ The authority of the Judges to issue any order upon the Licensing Division appears to be at issue, as while the Judges have frequently issued orders upon the Licensing Division, IPG's motion that the Judges direct the Licensing Division to make final disbursement of 2000-2003 cable royalties was denied on the grounds that the Judges “lack authority to issue orders to the Librarian of Congress or those acting under her

At this point, it is not the exception, but the norm, that overpayments have been identified with zero (timely) consequence, even when the overpaid party has been made explicitly aware of the overpayment(s) it received. For this reason, it remains equitable and obvious that unless and until such excess disbursements have been repaid, no further distributions should be made to the Allocation Parties, and the pending motion for partial distribution should be denied.

IV. Procedurally, the Judges should clarify whether publication of the Allocation Parties' motion in the *Federal Register* is required. If so, the Allocation Parties' motion requires publication in the Federal Register before consideration.

Multigroup Claimants and its related entities have previously brought to the Judges' attention a contradiction in its rulings, as to the procedural requirement that a notice requesting comments to any motion for partial distribution under 17 U.S.C. § 801(b)(3)(C) be published in the *Federal Register*. The Judges have previously concluded that the statutory requirement for published notice and a comment period is inapplicable after the filing of Petitions to Participate ("PTP") and commencement of distribution proceedings. *See Order Denying IPG Motion for Partial Distribution*, Docket No. 2008-2 CRB 2000-2003 (Phase II), at 2 n. 1 (January 17, 2012); *see also Order Denying IPG Motion for Partial Distribution*, Docket No. 2008-2 CRB 2000-2003 (Phase II), at 3 n. 2 (February 11, 2014). According to those rulings, publication after the receipt of PTPs would be "unnecessary and duplicative" because only those claimants who submitted

authority". *See Order Denying IPG Emergency Motion to Compel Licensing Division* (Apr. 10 2020), Docket no. 2008-2 CD 2000-2003 (Phase II) (Remand).

acceptable PTPs are entitled to receive a Phase II distribution and only participants in the proceeding have standing to respond to the motion. *Id.*

Notwithstanding, in recent years the Judges have confusingly required that a notice and comment period be published in the *Federal Register* to any motion for partial distribution, *even if* the proceeding has already advanced beyond the stage of PTPs being filed. Even more confusing is that the Federal Register notices that have been eventually published expressly limit the ability to make comment to any “interested claimants”, yet thereafter define the universe of “interested claimants” to be only those participants that previously filed petitions to participate in the proceeding. Consequently, the only persons or entities allowed to make comment are the identical entities that were previously served the respective motions for partial distribution prior to the Judges issuing an order for publication of a notice and comment period in the *Federal Register*. See, e.g., Distribution of Cable Royalty Funds, 86 Fed. Reg. 50909 (Sept. 13, 2021); Distribution of Satellite Royalty Funds, 86 Fed. Reg. 50910 (Sept. 13, 2021). The *Federal Register* notice published in response to the Allocation Parties’ earlier motion for partial distribution did not impose such restriction, nonetheless such restriction would have been imputed by virtue of the Judges’ earlier ruling limiting comments to claimants and participants that had filed petitions to participate. See Distribution of 2015-2017 Satellite Royalty Funds, 87 Fed. Reg. 14298 (Mar. 14, 2022).

At this juncture, it appears that the Judges are procedurally requiring that a notice requesting comments to any motion for partial distribution under 17 U.S.C.

§801(b)(3)(C) be published in the *Federal Register*, irrespective of whether petitions to

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participate have been filed, but are nonetheless limiting response to the identical parties who were already served such motion. If such is the case, no consideration of the Allocation Parties' motion may ensue unless a notice and comment request is first published in the *Federal Register*.

CONCLUSION

Simply put, the reserve figure proposed by the Allocation Parties is wholly inadequate, and could likely generate a scenario as currently exists for each of the 2000-2003 cable proceeding, 1999-2009 satellite proceeding, and 2010-2013 cable/satellite proceeding, where misallocations and overpayments have been identified, with no immediate consequence or action taken thereon, even after years of requests and years of orders. Further, as a basic equitable concept, no party should be advanced any further funds from any proceeding without first remitting back to the Licensing Division those monies that were overpaid to it, a fact that singularly warrants denial of the Allocation Parties' motion for partial distribution.

As noted in the Judges' May 4, 2022 *Order Denying Motion for Partial Distribution*, the Allocation Parties were free to present a more appropriate proposal for partial or final distribution. Order at 2. No satisfactory proposal for partial distribution has been provided, and by all appearances, the only participant that is free to seek final

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distribution are the Commercial Television Claimants. Consequently, the *only* participant to whom Multigroup Claimants can logically consent to a distribution is a final distribution to the Commercial Television Claimants.

Respectfully submitted,

Dated: August 30, 2022

_____/s/_____
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CERTIFICATE OF SERVICE

I certify that on August 30, 2022, I caused a copy of the foregoing pleading to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

/s/

Brian D. Boydston, Esq.

Proof of Delivery

I hereby certify that on Tuesday, August 30, 2022, I provided a true and correct copy of the Multigroup Claimants' Opposition to Allocation Parties' Joint Motion for Further Distribution of 2015-2017 Satellite Royalties to the following:

Major League Soccer, L.L.C., represented by Edward S. Hammerman, served via E-Service at ted@copyrightroyalties.com

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis, served via E-Service at smosenkis@ascap.com

Program Suppliers, represented by Lucy H Plovnick, served via E-Service at lhp@msk.com

Global Music Rights, LLC, represented by Scott A Zebrak, served via E-Service at scott@oandzlaw.com

SESAC Performing Rights, LLC, represented by Timothy L Warnock, served via E-Service at twarnock@loeb.com

Devotional Claimants, represented by Matthew J MacLean, served via E-Service at matthew.maclean@pillsburylaw.com

Broadcast Music, Inc., represented by Jennifer T. Criss, served via E-Service at jennifer.criss@dbr.com

Broadcaster Claimants Group, represented by John Stewart, served via E-Service at jstewart@crowell.com

Joint Sports Claimants, represented by Michael E Kientzle, served via E-Service at michael.kientzle@arnoldporter.com

Signed: /s/ Brian D Boydston